



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 60, 70, 71 and 98**

**[EPA-HQ-OAR-2013-0495; FRL-9906-59-OAR]**

**RIN 2060-AQ91**

**Standards of Performance for Greenhouse Gas Emissions From New**

**Stationary Sources: Electric Utility Generating Units**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Data Availability (NODA).

**SUMMARY:** The EPA is issuing this NODA in support of the proposed rule titled "Standards of Performance for Greenhouse Gas Emissions From New Stationary Sources: Electric Utility Generating Units" that was published on January 8, 2014. Through this NODA and the technical support document it references, the EPA solicits comment on its interpretation of the provisions in the Energy Policy Act of 2005, including the federal tax credits contained in that Act, which limit the EPA's authority to rely on information from facilities that received assistance under that Act. The EPA believes those provisions do not alter the EPA's determination in the proposed rule that the best system of emission reduction for new fossil fuel-fired boiler and integrated gasification combined cycle electric utility generating units is partial carbon capture and sequestration.

**DATES:** Comments must be received on or before Monday, March 10, 2014.

**ADDRESSES:** Comments. Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2013-0495, by one of the following methods:

At the website <http://www.regulations.gov>: Follow the instructions for submitting comments.

At the website <http://www.epa.gov/oar/docket.html>: Follow the instructions for submitting comments on the EPA Air and Radiation Docket website.

Email: Send your comments by electronic mail (email) to [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov), Attn: Docket ID No. EPA-HQ-OAR-2013-0495.

Facsimile: Fax your comments to (202) 566-9744, Attn: Docket ID No. EPA-HQ-OAR-2013-0495.

Mail: Send your comments to the EPA Docket Center, U.S. EPA, Mail Code 28221T, 1200 Pennsylvania Ave., NW, Washington, DC 20460, Attn: Docket ID No. EPA-HQ-OAR-2013-0495. Please include a total of two copies.

Hand Delivery or Courier: Deliver your comments to the EPA Docket Center, William Jefferson Clinton West Building, Room 3334, 1301 Constitution Ave., NW, Washington, DC, 20004, Attn: Docket ID No. EPA-HQ-OAR-2013-0495. Such deliveries are accepted only during the Docket Center's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays), and special arrangements should be made for

deliveries of boxed information.

Instructions: All submissions must include the agency name and docket ID number (EPA-HQ-OAR-2013-0495). The EPA's policy is to include all comments received without change, including any personal information provided, in the public docket, available online at <http://www.regulations.gov>, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404-02), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA-HQ-OAR-2013-0495. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD-ROM that you mail to the EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information you claim as CBI. In addition to one complete version of the comment that includes information claimed as CBI, you must submit a copy of the comment that does not contain the information claimed as CBI for inclusion in the

public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

The EPA requests that you also submit a separate copy of your comments to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**). If the comment includes information you consider to be CBI or otherwise protected, you should send a copy of the comment that does not contain the information claimed as CBI or otherwise protected.

The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available (e.g., CBI or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at the EPA Docket Center, William Jefferson Clinton West Building, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742. Visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm> for additional information about the EPA's public docket.

**FOR FURTHER INFORMATION CONTACT:** Dr. Nick Hutson, Energy Strategies Group, Sector Policies and Programs Division (D243-01), U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541-2968, facsimile number (919) 541-5450; email address: [hutson.nick@epa.gov](mailto:hutson.nick@epa.gov) or Mr. Christian Fellner, Energy Strategies Group, Sector Policies and Programs Division (D243-01), U.S. EPA, Research Triangle Park, NC 27711; telephone

number (919) 541-4003, facsimile number (919) 541-5450; email address: fellner.christian@epa.gov.

**SUPPLEMENTARY INFORMATION:**

Outline. The information presented in this NODA is organized as follows:

I. Does this action apply to me?

II. What are the background and purpose of this NODA?

**I. Does this action apply to me?**

The entities potentially affected by the determination that is at issue in this NODA are shown in Table 1 below.

**Table 1. Potentially Affected Entities<sup>a</sup>**

Category	NAICS* Code	Examples of Potentially Affected Entities
Industry	221112	Fossil fuel electric power generating units.
Federal Government	221112 <sup>b</sup>	Fossil fuel electric power generating units owned by the federal government.
State/Local Government	221112 <sup>b</sup>	Fossil fuel electric power generating units owned by municipalities.
Tribal Government	921150	Fossil fuel electric power generating units in Indian Country.

\* North American Industry Classification System

<sup>a</sup> Includes NAICS categories for source categories that own and operate electric power generating units (including boilers and stationary combined cycle combustion turbines).

<sup>b</sup> Federal, state or local government-owned and operated establishments are classified according to the activity in which they are engaged.

This table is not intended to be exhaustive but to provide

a guide for readers regarding entities likely to be affected by this NODA. To determine whether this NODA affects your facility, company, business, organization, etc., you should examine the applicability criteria in 40 CFR 60.1. If you have questions regarding applicability, consult either the air permitting authority for the entity in question or your EPA regional representative as listed in 40 CFR 60.4 or 40 CFR 63.13 (General Provisions).

## **II. What are the background and purpose of this NODA?**

On January 8, 2014, the EPA published the proposed rule, "Standards of Performance for Greenhouse Gas Emissions From New Stationary Sources: Electric Utility Generating Units," (79 FR 1430) which was issued pursuant to Clean Air Act (CAA) section 111. In the proposed rule, the EPA explains its rationale for emission standards for new fossil fuel-fired boiler and integrated gasification combined cycle (IGCC) electric utility generating units (EGUs). These standards are based on the determination that the best system of emission reduction (BSER) for those sources is partial carbon capture and sequestration (CCS). The EPA today is providing a technical support document (TSD) that addresses the interaction of the determination of BSER in the proposed rule and several provisions in the Energy Policy Act of 2005 (EPAct05), which are described immediately below.

Limitations associated with EPOact05. In providing assistance to fossil fuel-fired electricity generating plants and other facilities that employ advanced technology, EPOact05 included several provisions that limit the EPA's authority to rely on information from those facilities in conducting rulemaking or taking other action under various provisions of the CAA, including section 111. Section 402(i) of the EPOact05, codified at 42 USC section 15962(i), provides as follows, insofar as is presently relevant, that no technology, or level of emission reduction, solely by reason of the use of the technology, or the achievement of the emission reduction, by one or more facilities receiving assistance under EPOact05, shall be considered to be adequately demonstrated for purposes of section 111 of the Clean Air Act.<sup>1</sup>

In addition, internal revenue code (IRC) section

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<sup>1</sup>In addition, EPOact05 Title IV amended the Energy Policy Act of 1992 (42 U.S.C. 13201 et seq.) (EPOact92) by adding the "Clean Air Coal Program" to support and promote the production and generation of clean coal-based power, including supporting air pollution control technologies. These provisions included, in EPOact05 §421(a), a constraint similar to EPOact05 §402(i). As amended by EPOact05 §421(a), EPOact92 §3103(e) (42 U.S.C. 13573(e)) and EPOact92 §3104(d) (42 U.S.C. 13574(d)), provides, insofar as is presently relevant, under the heading, "Applicability," that no technology, or level of emission reduction, shall be treated as adequately demonstrated for purpose of section 111 of the Clean Air Act solely by reason of the use of such technology, or the achievement of such emission reduction, by one or more facilities receiving assistance under section 3102(a)(1) or (2) of the Energy Policy Act of 1992, as amended (42 U.S.C. 13572(a)(1)).



48A(g), codified at 26 USC section 48A(g), provides ,insofar as is presently relevant, that no use of technology (or level of emission reduction solely by reason of the use of the technology), and no achievement of any emission reduction by the demonstration of any technology or performance level, by or at one or more facilities with respect to which a credit is allowed under this section, shall be considered to indicate that the technology or performance level is adequately demonstrated for purposes of section 111 of the Clean Air Act. As explained in the TSD, the EPA's preliminary

interpretation of these provisions is that EPA may not rely on information from facilities that have received assistance under EPAct05, including being allowed tax credits under IRC section 48A, as the sole basis for a determination that a particular technology is the best system of emission reduction adequately demonstrated (BSER), but the EPA may rely on information from those facilities in conjunction from other information to support such a determination, or to corroborate an otherwise supported determination. In the TSD, the EPA also explains and solicits comments on other issues of interpretation that arise from the terms of IRC section 48A(g).

2014 Proposal BSER and EPAct05. In the proposed rule, the EPA determined that implementation of partial capture CCS technology is the BSER for new fossil fuel-fired boilers and IGCC units because it fulfills the criteria established under CAA section 111. The EPA's rationale, insofar as is relevant for present purposes, is that partial capture is technically

feasible and can be implemented at a reasonable cost. In discussing its rationale, the EPA referenced some facilities that have received financial assistance under the EPAct05, including being allocated tax credits pursuant to IRC section 48A. As explained in the TSD, however, the EPA's rationale does not depend solely upon those projects, and the determination remains adequately supported without any information from facilities that have been allocated the IRC section 48A tax credit.

Thus, the EPA's proposed standards, which are based on its determination that partial capture CCS represents the best system of emission reduction adequately demonstrated, are not beyond the scope of its legal authority. As indicated in the TSD, the EPA solicits comment on all aspects of the interpretation of the provisions in EPAct05, including IRC section 48A(g), that limit the EPA's authority to rely on certain information in rulemaking under CAA section 111.

**List of Subjects**

**40 CFR Part 60**

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

**40 CFR Part 70**

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

**40 CFR Part 71**

Environmental Protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

**40 CFR Part 98**

Environmental protection, Greenhouse gases and monitoring, Reporting and recordkeeping requirements.

Dated: February 5, 2014.

Mary E. Henigin,  
Acting Director,  
Office of Air Quality Planning and Standards.

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